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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEAN G. DUFFY,

Plaintiff,

NO. C92-1596R
93-637R

v.

CHASE RIVELAND, et al.,

Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the court on a Magistrate Judge's Report and Recommendation (R&R) and the plaintiff's objections to the R&R. The court has reviewed the R&R, the plaintiff's objections and the documents filed in support of and in opposition to the underlying summary judgment motion. Being fully advised, the court declines to adopt the R&R and grants the plaintiff's motion for summary judgment.

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Duffy v. Riveland



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ORDER
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I. BACKGROUND

Sean Duffy is an deaf inmate currently incarcerated at the Washington State Reformatory at Monroe, Washington. In 1992, he filed two pro se suits against various prison officials contending that their failure to provide him with a qualified interpreter at prison proceedings violated his rights under state and federal law. In the first suit, which was filed in this court, Duffy challenged the defendants' failure to provide him with a qualified interpreter at a July 30, 1992, prison disciplinary hearing. In the second suit, filed in another court in this district, Duffy challenged the defendants' failure to provide him with a qualified interpreter at two separate classification hearings. Both suits were dismissed on defense motions for summary judgment. Duffy appealed.

The Ninth Circuit Court of Appeals consolidated the two cases and reversed the summary judgments in part and affirmed in part. Duffy v. Riveland, 98 F.3d 447 (1996). On remand, Duffy seeks summary judgment of his state law claim. This court referred the summary judgment motion and other pretrial matters to a Magistrate Judge, who recommends dismissal of Duffy's state law claim under 28 U.S.C. § 1367(c)(1).

II. DISCUSSION

In his original complaint, Duffy alleged that the defendants violated a Washington State statute, RCW 2.42.120(1), that requires a qualified interpreter to be appointed for a hearing-impaired person who is a party or a witness in a judicial or quasi-judicial proceeding:

If a hearing impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision, including but not limited to civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile

1 proceedings, adoption proceedings, mental health commitment proceedings, and any
2 proceeding in which a hearing impaired person may be subject to confinement or criminal
3 sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret
4 the proceedings.

5 The statute does not explicitly provide for a remedy to address a violation of its requirements. The
6 parties dispute whether, as a threshold matter, Duffy has a private right of action to pursue a
7 violation of this statute and whether this court has jurisdiction over his state law claim.

8 A. Supplemental Jurisdiction

9 In civil matters over which this court has original jurisdiction, it also has supplemental
10 jurisdiction "over all other claims that are so related to claims in the action within [the court's]
11 original jurisdiction that they form part of the same case or controversy under Article III" of the
12 Constitution. 28 U.S.C. § 1367(a). The court may, however, decline to exercise its supplemental
13 jurisdiction if, among other things, "the claim raises a novel or complex issue of State law." Id.
14 § 1367(c)(1). The Magistrate recommends that this court exercise its discretion to decline
15 jurisdiction over Duffy's state law claim because it presents a novel issue of state law.

16 On appeal to the Ninth Circuit, the defendants argued that Duffy does not have a private
17 right of action to enforce RCW 2.42.120. Although no Washington court has decided this precise
18 issue, in Duffy the Ninth Circuit observed that the Supreme Court of Washington rejected a similar
19 argument in Bennett v. Hardy, 113 Wn.2d 912 (1990). Applying factors set forth in Bennett for
20 determining whether a statute that is otherwise silent on this issue provides a private right of action,
21 the Ninth Circuit concluded that RCW 2.42.120 does provide a private right of action. While
22 Duffy's claim may present a novel issue of state law, the Ninth Circuit has already resolved it on
23 appeal, and it is not this court's province to hold otherwise.
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1 Furthermore, to dismiss this claim now on the ground that it presents a novel issue of state
2 law would be manifestly unfair. It has been over five years since Duffy filed his first complaint.
3 Until now, the defendants have not challenged the court's jurisdiction over the state law claim. If
4 Duffy is forced to refile this claim in state court, it is likely that any claim based on the July 1992
5 disciplinary hearing will be time-barred. The court declines to exercise its discretion to dismiss this
6 case under 28 U.S.C. § 1367(c)(1) and will address the summary judgment motion on the merits.

7 **B. Summary Judgment**

8 On remand, Duffy seeks summary judgment on the issue of the defendants' liability under
9 RCW 2.42.120. He is also asking this court to order the defendants to provide him with the services
10 of a qualified interpreter at any future disciplinary hearings. The Ninth Circuit addressed two issues
11 relevant to the present summary judgment motion. First, it held that Duffy has a private right of
12 action to redress a violation of RCW 2.42.120. Second, it held that the 1992 disciplinary hearing
13 was a quasi-judicial proceeding for purposes of determining whether the statute requires the
14 appointment of a qualified interpreter.
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16 Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories,
17 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to
18 any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ.
19 P. 56(c). There are no facts in dispute regarding Duffy's state law claim. Thus, summary judgment
20 of this issue is appropriate.
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22 The Ninth Circuit held that the defendants had a statutory duty to provide Duffy with a
23 qualified interpreter at his 1992 disciplinary hearing. It also held that Duffy has a private right of
24 action against the defendants to redress this statutory violation. Since there are no facts in dispute,
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Duffy is entitled to judgment as a matter of law on the issue of the defendants' liability.

1 Notwithstanding the Ninth Circuit's opinion, the defendants make a number of arguments in
2 opposition to the summary judgment motion. First, they contend they are not liable to Duffy
3 because they are entitled to both quasi-judicial immunity and qualified immunity under state law.
4 Second, they argue that Duffy's claim for injunctive relief is barred by the Eleventh Amendment.

5 1. Immunity

6 a. Quasi-judicial immunity

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8 "Quasi-judicial immunity attaches to persons or entities who perform functions that are so
9 comparable to those performed by judges that it is felt they should share the judge's absolute
10 immunity while carrying out those functions." Lutheran Day Care v. Snohomish County, 119 Wn.2d
11 91, 99 (1992). The court finds no merit in the defendants' argument that they are entitled to quasi-
12 judicial immunity. Duffy is not challenging the outcome of his hearing, *i.e.* the adjudication of the
13 charges against him. He is challenging the defendants' failure to provide him with a qualified
14 interpreter as required by state law. This is an administrative function to which quasi-judicial
15 immunity does not attach. See Taggart v. State, 118 Wn.2d 195, 210 (1992).

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17 b. Qualified immunity

18 A defendant can claim qualified immunity if he or she (1) carries out a statutory duty,
19 (2) according to procedures dictated by statute and superiors, and (3) acts reasonably. Babcock v.
20 State, 116 Wn.2d 596, 618 (1991). This defense is unavailable here. Duffy's claim is based on the
21 defendants' *failure* to carry out a statutory duty. He is not suing in negligence or otherwise arguing
22 that the defendants improperly carried out a statutory duty. A defendant "cannot claim even a
23 qualified immunity when [it] fail[s] to follow a statutory procedure." Id. (emphasis added).
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2. Injunctive relief

1 The defendants contend that Duffy's claim for injunctive relief is precluded by Pennhurst
2 State School & Hospital v. Halderman, 498 U.S. 850 (1984). They argue that under Pennhurst this
3 court cannot order state officials to comply with state law. Pennhurst, however, holds that a state or
4 its agencies cannot be sued in federal court absent its consent, regardless of whether the plaintiff is
5 seeking damages or injunctive relief. The defendants challenge the type of relief contemplated here.
6 But they do not assert that they are immune from suit under the Eleventh Amendment. The court
7 concludes, therefore, that the Pennhurst doctrine does not apply.

3. Scope of relief

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10 At the July 1992 hearing, Duffy was found guilty of a prison rule infraction that is also a
11 misdemeanor offense under state law. The Ninth Circuit concluded that the hearing was a quasi-
12 judicial proceeding under RCW 2.42.120 on two bases: (1) Duffy was charged with conduct that
13 constituted a state criminal offense and (2) the hearing officer's determination of his guilt, therefore,
14 "was comparable to the ordinary business of courts." Duffy, 98 F.3d 447, 458. Based on this
15 language, the defendants argue that the Ninth Circuit intended to limit its holding to disciplinary
16 hearings that adjudicate a prisoner's guilt for conduct that also violates a state criminal statute. They
17 argue that the holding cannot be extended to disciplinary hearings on prison rule infractions are not
18 also a violation of a criminal statute. They argue, therefore, that the court should not grant
19 injunctive relief for *all* future disciplinary hearings, only those that involve a prison rule infraction
20 that is also a violation of state law.

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23 The court is not persuaded that the Ninth Circuit intended to distinguish among disciplinary
24 hearings based on the type of infraction alleged. RCW 2.42.120 requires the defendants to provide
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1 hearing-impaired inmates with a qualified interpreter at quasi-judicial proceedings. The Ninth Circuit
2 determined that a prison disciplinary hearing is a quasi-judicial proceeding. It did not make the
3 distinction the defendants urge. On the contrary, in the case it cited in support of its holding that a
4 prison disciplinary hearing is a quasi-judicial proceeding, the inmates were charged with encouraging
5 a work stoppage, a prison rule infraction that does not also violate a state criminal statute. See
6 Cleavinger v. Saxner, 474 U.S. 193 (1985). The court concludes that injunctive relief should extend
7 to all future disciplinary hearings.

8
9 **III. CONCLUSION**

10 The court declines to adopt the Magistrate Judge's report and recommendation and hereby
11 **GRANTS** plaintiff's motion for summary judgment.

12 **DATED** at Seattle, Washington this 14th day of January, 1998.

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16 **BARBARA JACOBS ROTHSTEIN**
17 **UNITED STATES DISTRICT JUDGE**